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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
IVT.0034US

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on August 7, 2006

Signature

Typed or printed name Stephanie Petreas

Application Number	Filed
10/690,265	October 21, 2003

First Named Inventor	
Dominik J. Schmidt	
Art Unit	**Examiner**
2617	Kiet M. Doan

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- ☑ attorney or agent of record. Registration number 42,117
- ☐ attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34

Signature

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Typed or printed name

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Telephone number

August 7, 2006
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☑ *Total of 1 forms are submitted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	DOMINIK J. SCHMIDT	§	Group Art Unit:	2617
		§		
Serial No.:	10/690,265	§		
		§	Examiner:	Kiet M. Doan
Filed:	October 21, 2003	§		
		§		
For:	WIRELESS SECURITY	§	Atty. Dkt. No.:	IVT.0034US

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicant seeks pre-appeal review of the rejections of claims 1-4 and 6-17. It is respectfully submitted that the rejections to pending claims 1-4 and 6-17 are clearly erroneous and the burden of an appeal should be avoided.

Pending claims 1-3, 6-10 and 12-14 stand rejected under 35 U.S.C. § 103(a) over U.S. Publication No. 2004/0014423 (Croome) in view of U.S. Patent No. 6,611,692 (Raffel). The rejection is clearly erroneous as the references fail to teach or suggest all of the claimed subject matter, as required for a proper obviousness rejection. M.P.E.P. §2143. As to claim 1, the Examiner concedes that Croome does not teach determining a desired level of service and dynamically adjusting a number of time slots assigned to a wireless communication medium during data transmission to remain within limits of the desired level of service.

Nor does Raffel anywhere teach or suggest such dynamic adjusting, although the Examiner contends this:

> In an analogous art, Raffel teaches 'Cordless cellular system'. Further, Raffel teaches if the mobile unit access is grant, determining a desired level of service; and dynamically adjusting a number of time slots assigned to the medium during

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Stephanie Petreas

> transmission to remain within limits of said desired level of service (C9, L61-67, C10, L1-20)....

Final Office Action, p. 4.

However, neither these cited portions nor anywhere else in Raffel teach determining a desired level of service. The Examiner's lack of a specific citation to any portion of Raffel that teaches such determining of a desired level of service is telling. Simply put, nothing in Raffel teaches or suggest such determining.

Nor does Raffel anywhere teach or suggest "dynamically adjusting a number of time slots" assigned to a wireless medium and certainly not such dynamic adjusting "during data transmission to remain within limits of the desired level of service," as recited by claim 1. This is so for several reasons. First, Raffel nowhere teaches dynamic adjusting of time slots assigned to a medium. Instead, all that Raffel teaches is that particular time slots are allocated to different services. However, this allocation of time slots is fixed and Raffel nowhere teaches or suggests dynamically adjusting such allocation of time slots. The Examiner even concedes this in the Advisory Action:

> [Raffel] teach cordless base station transmit time frame and different service such as time slot 1 transmit digital control channel and time slot 2-3, 5-6 transmits voice and data and time slot 4 for mobile synchronize with base station....

Advisory Action mailed July 25, 2006, p. 2.

Instead, the cited portions of Raffel merely teach that a single TDMA frame includes multiple time slots, each of which is dedicated to a particular function. Raffel, col. 9, ln. 65-col. 10, ln. 63. Instead of the claimed subject matter, Raffel teaches the opposite. That is, the slots associated with the cordless base station remain fixed. For example, with reference to FIG. 4 and columns 9-10 (cited by the Examiner) of Raffel, time slots 2 and 5 are dedicated to a second mobile station, MS2, while time slots 3 and 6 are dedicated to a first mobile station, MS1. Where is there any dynamic adjusting? There isn't.

Second, Raffel nowhere teaches or suggests performing such dynamic adjusting (nowhere taught or suggested by Raffel) during data transmission to remain within limits of a desired level of service. This is so, as Raffel further nowhere teaches or suggests adjusting these time slots during data transmission. Instead, these services are allocated to these time slots in a fixed manner during data transmission. Nor is there any indication of a desired level of service that a data transmission is to remain within. Accordingly, the rejection of claim 1 is clearly erroneous.

The rejection of claim 1 over the proposed combination is further improper, as there is no legally sufficient motivation to combine the references. In this regard, all that the Examiner states is that it would have been obvious to modify Croome and Raffel, then the Office Action proceeds to recite the subject matter of claim 1. Final Office Action p. 4. This alleged motivation is conclusory and lacks a legally sufficient basis for the proposed combination. *In re Lee,* 61 U.S.P.Q.2d 1430, 1435 (Fed. Cir. 2001). Even further, it is apparent that the proposed combination is nothing more than hindsight-based reconstruction, in contravention of well established Federal Circuit precedent. *E.g., In re Kotzab,* 55 U.S.P.Q.2d 1313,1316-17 (Fed. Cir. 2000). Accordingly, the rejection of claim 1 and its dependent claims is clearly erroneous.

Dependent claim 6 is further patentable, as the citation to Raffel nowhere teaches or suggests detecting a wireless communication medium that fails to meet a desired level of service, and allocating the medium to a configuration having additional time slots. This is so, at least because the cited portion of Raffel merely teaches registering a cellular telephone with a base station. In no way does this teach or suggest allocation of a medium to a configuration having additional time slots as a result of detecting that the medium fails to meet a desired level of service. Instead, as described above the allocation of services to time slots remains fixed. For this further reason, the rejection of claim 6 and the claims depending therefrom is clearly erroneous.

Independent claim 8 stands rejected under §103(a) over Croome and Raffel. As to claim 8, nowhere does Croome teach or suggest selecting one of first and second wireless media to act as a common medium and routing a data transmission through the common wireless medium. In this regard, the Examiner contends that wireless access mechanisms 104 and 1104 correspond to the first and second wireless media. Final Office Action, p. 6. However, nowhere does Croome anywhere teach or suggest that one of these mechanisms can be selected as a common medium through which data transmissions are routed. Rather, second mechanism 1104 is only mentioned in passing (Croome, ¶74), and nowhere is it taught or suggested that this mechanism (or first mechanism 104) can be used as a common medium for multiple wireless media. Instead, each access mechanism is dedicated to a different function and the transmissions through these media are independent and are not routed through a common wireless medium. Accordingly, claim 8 and the claims depending therefrom are patentable over the proposed combination.

To the extent that the Examiner contends that processor 1002 is a "common wireless medium" (Advisory Action, pp. 3-4), this is clearly erroneous. Simply put, processor 1002 of Croome is a hardware device, namely a processor. How can this piece of hardware internal to the device of Croome be a wireless medium? There is nothing in Croome that anywhere teaches or suggests that this hardware device can act as a wireless medium, and certainly not a common wireless medium as recited by claim 8.

Furthermore, the Examiner's contention that processor 1002 is the common wireless medium is based on an incorrect reading of claim 8. That is, claim 8 recites that one of the first and second wireless media (identified by the Examiner to be wireless access mechanisms 104 and 1104) acts as the common wireless medium. It defies logic and ignores the claim language to somehow contend that processor 1002, which the Examiner concedes is not one of the first or second wireless media, is this common wireless medium. Accordingly, the rejection of claim 8 is clearly erroneous.

Still further, because Raffel adds nothing to the subject matter of this claim (it is respectfully noted that the Examiner fails to even mention Raffel in connection with this rejection of claim 8), there is absolutely no basis for a §103 rejection using Raffel. For at least the same reasons, independent claim 12 and the claims depending therefrom are patentable.

The rejection of claims 4, 11 and 15-17 under §103(a) over Croome in view of Raffel and in further view of an additional reference to Melaku is clearly erroneous at least for the same reasons as the independent claims from which these claims depend.

Since these rejections are clearly violative of existing PTO policy, the need for an appeal should be avoided.

In view of these remarks, the application is now in condition for allowance and the Examiner's prompt action in accordance therewith is respectfully requested. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 20-1504.

Respectfully submitted,

Date: August 7, 2006

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